

Please note that the Department has no authority to compel the seller to file a claim for credit. Whether or not the seller files a claim for credit with the Department is a private business matter. (This is a GIL.)

May 4, 2007

Dear Xxxxx:

This letter is in response to your letter received in the Legal Services Office on October 11, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The Department's regulations at 2 Ill. Adm. Code 1200.110(a)(4) provide that "[w]hether to issue a private letter ruling in response to a letter ruling request is within the discretion of the Department. The nature of your inquiry and the information you have provided require that we respond with a GIL.

In your letter you have stated and made inquiry as follows:

TITLE 2: GOVERNMENTAL ORGANIZATION
SUBTITLE D: CODE DEPARTMENTS
CHAPTER XXI: DEPARTMENT OF REVENUE
PART 1200 PUBLIC INFORMATION, RULEMAKING AND ORGANIZATION
SECTION 1200.110 PRIVATE LETTER RULINGS

b) 1.

Please submit in writing a private letter ruling concerning the taxation of the following chemical used for my agricultural haying operation. On June 28 2006, I purchased 1800 pounds of premixed preservative used to prevent hay from growing bacteria (molding) when the moisture content is above 16 percent. ABC informed me that the preservative is taxable and does not fall under the following exemption:

Section 130.1955 Farm Chemicals

- a) Effective October 1, 1975, vendors of farm chemicals are exempt from Retailers' Occupation Tax on their receipts from such sales.
- b) Farm chemicals include any chemical product used in production agriculture, the products of which are to be sold, or in the production or care of animals that are to be sold or the products of which are to be sold. Examples of exempted items are stock sprays, disinfectants and the like, stock tonics, serums, vaccines, poultry remedies and other medicinal preparations and conditioners, water purifying products, insecticides, weed killers and the like. (For a definition of production agriculture, see Section 2-35 of the Act.)

I have ask [sic] to be refunded the taxed amount of \$134.88 from ABC and until they receive a letter stating that this preservative is tax exempt, they will not return my money.

b) 2. Enclosed is a copy of the receipt.

b) 3. There is no audit or litigation pending

b) 4. After speaking with a representative of IDOR, she assisted me in finding the statue for assisting in writing to you.

b) 5. There aren't any authorities that I know of that will support my views.

b) 6. There aren't any authorities to dispute my views, except ABC, the company selling the product.

b) 7. I have no trade secrets that need to be deleted.

b) 8. (signature)

DEPARTMENT'S RESPONSE

In regard to preservatives used for drying hay, these products may qualify for the farm chemical exemption pursuant to 86 Ill. Adm. Code 130.1955. It is important to remember that in order to qualify for the farm chemical exemption the chemical must be used in production agriculture, the products of which are to be sold, or in the production or care of animals that are to be sold or the products of which are to be sold. See Section 130.1955(b).

You may want to review the Department's rule at 86 Ill. Adm. Code 130.1501 concerning Claims for Credit. Claims for credit and refunds are available when a person shows that he paid tax to the Department as a result of a mistake of fact or law. Only the remitter of the tax erroneously paid to the Department is authorized to obtain a refund. In order to obtain a credit, one must first demonstrate that he or she has borne the burden of the tax erroneously paid. Claims for credit shall state the requirements that are contained in subpart (b) of the regulation. The repayment of the tax to the customer will satisfy the requirement of Section 130.1501(a)(2).

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If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk